

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1712 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ND WADHWA

Versus

GUJ STATE TEXTILE CORPORATION LTD.

Appearance:

1. Special Civil Application No. 1712 of 1991
MR DC RAVAL with MR ANAND for Petitioner No. 1
MR HM BHAGAT for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 27/08/2004

ORAL JUDGEMENT

By order dated 30th June, 1994 the Official

Liquidator is joined as a party-respondent but he is not appearing in the matter and therefore the matter is taken up for final disposal today.

2 The petitioner is a graduate holding qualification of Bachelor of Textile Technology (B.Text), which is a full-fledged degree course imparted by Delhi University. The petitioner after his graduation was working in technical and supervisory position in textile mills and finally reached the post of the Manager of textile mill. The petitioner joined services of the respondent-Corporation when he was first appointed as a General Manager by Visnagar Cooperative Spinning Mills Limited, which is being administered by the Gujarat State Textile Corporation, by an order dated 23rd December, 1986 and he was on probation for a period of one year. On completion of probationary period the petitioner was confirmed in service by order dated 28th December, 1988 and the said decision was taken by Personnel Committee of the respondent-Corporation.

3 It appears that by order dated 9th February, 1989 the petitioner was offered the post of General Manager in one of the mills of the respondent-Corporation at Ahmedabad. Though the petitioner was a confirmed officer, he was given the aforesaid appointment as if he is a fresh recruit and he was again placed on a probation period of one year. The petitioner accepted the said offer as he wanted a posting in Ahmedabad because of his family circumstances and educational needs of his children. The petitioner appears to have agreed to be on a probation for a period of one year on the understanding that the very management had already confirmed him one in the very post of General Manager and it does not create any problem. The petitioner was given appointment order dated 14th March, 1989 and was posted as General Manager at New Swadeshi Mills in Ahmedabad. That the probationary period of the petitioner was to be over on 14th March, 1990 and in the meanwhile the petitioner was transferred from New Swadeshi Mills to Sahyog Textiles, Ahmedabad. The petitioner performed his duties at both the units and he continued in service till 15th March, 1990 and thereafter the petitioner was not issued any order saying that his probation period is extended nor he was confirmed in service.

4 It is stated that the petitioner came to know that on 10th February, 1991 a disgruntled employee whose request for additional salary was rejected by the petitioner made a complaint against the petitioner to the M.D. of the respondent-corporation in the name of some

unnamed merchant. That on 20th February, 1991 the petitioner received two orders both dated 20th February, 1991. The first order extended his period of probation till 20th February, 1991 and by the second order the services of the petitioner were terminated with immediate effect. It is contended by the petitioner that his probation period was extended just to terminate the services of the petitioner so that the petitioner is deprived of departmental inquiry and reasonable opportunity of to defend himself. It is also contended that the petitioner had excellent confidential reports from his superiors including MD of Visnagar Cooperative Spinning Mills Limited.

5 Mr Raval for the petitioner contended that though the petitioner was confirmed by order dated 28th December, 1988 and again he was appointed as General Manager on 20th February, 1991 and he has been removed on the ground that he is on probation. Therefore, he has approached this Court for quashing and setting aside the orders at Annexure-E and F and also prayed that he should be treated to have continued in service on the post and cadre of General Manager on regular basis as a confirmed officer.

6 Though Rule was issued on 23rd March, 1991 and respondents were represented by the learned advocates, no reply is filed on record till this date. The averments made in the petition are gone without any reply. This matter was placed before the Court on several occasions and lastly on 25th July, 2004 on which date, as a last chance, matter was adjourned to today. Even today also no one has appeared for the respondents. In that view of the matter, the Court has no other option but to believe the averments made in the petition and the submissions of the petitioner.

7 In view of the fact that the petitioner was confirmed and no inquiry is conducted before relieving him, the order of relieving him at Annexure-E dated 20th February, 1991 and order at Annexure-F dated 20th February, 1991 are required to be quashed and set aside. In view of the fact that since the petitioner was confirmed earlier as per the order at Annexure-B to the petition, the petitioner cannot be removed without due process of law.

8 In the result, the petition is allowed. The orders at Annexure-E and Annexure-F are quashed and the petitioner will be taken into service with all consequential benefits from 14th March, 1990.

9 It is made clear that the respondent-mill is closed, the petitioner will be given same benefits which are given to the other employees when the respondent-corporation was closed, namely, 45 days compensation for every completed year of service and the petitioner's service will be considered as a continuous service for all purposes. Rule is made absolute.

10 This order is passed ex-parte. It will be open for the Official Liquidator to move this Court within 30 days from the date of receipt of the order, failing which no application will be entertained. Writ to be sent down forthwith.

(K.S. Jhaveri, J.)

*mohd